

# Covid Cess May Face Legal Hurdles: Experts

**Sachin.Dave@timesgroup.com**

**Mumbai:** The government's plan to raise additional funds by introducing additional cess or surcharge over and above current tax rates may end up facing legal hurdles, say tax experts. Issues around legality of the cess, its implementation and splitting of monies collected between federal and regional governments will crop up, say experts.

While the modality of the same is still not clear, the government is looking to introduce additional cess on current direct and indirect taxes to fund the cost of Covid vaccination through the cess. This would mean that the Covid-19 cess would be applicable on income tax as well as on goods and services tax (GST).

The first hurdle would be how to bring in the cess and then how to introduce a sunset clause or how to roll that back, say tax experts. "The percentage of Covid-19 cess on direct taxes would depend on how much the government wishes to raise at this point in time but one needs

to balance with the objective of remaining internationally competitive, especially given the recent lowering of corporate tax rates. Further, an introduction for a clearly defined time frame will avoid the possibility of an annual rollover of the cess, as has happened in some instances in the past," said Gautam Mehra, partner tax, PwC India.

The foundation of any cess over and above indirect tax — GST — is not allowed as per the current framework, which if tweaked will pave way for states levying their own versions of different top up taxes. "The imposition of any sort of cess is a clear deviation from the objectives of GST and may be challenged in the court. While the constitution provides that the GST Council may recommend imposition of any special rate to raise additional resources during any natural calamity or disaster, the imposition of cess will open the Pandora box for levying cess in future even by states," said Abhishek A Rastogi, Partner at Khaitan & Co.

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